

SIKKIM

GOVERNMENT **GAZETTE**

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

Gangtok

Tuesday 06th October, 2009

No. 379

**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK**

No:119/Home/2009

Dated: 09/09/2009

NOTIFICATION

In exercise of the powers conferred by section 12 of the Commission of Inquiry Act, 1952 (60 of 1952), the State Government hereby makes the following rules, namely:-

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| Short title,
commencement
& application | 1. | (1) These rules may be called the Sikkim Commissions of Inquiry Rules, 2009.
(2) They shall come into force on the date of their publication in their official Gazette.
(3) They shall apply to a Commission of Inquiry appointed by the State Government in pursuance of section 3 of the Commissions of Inquiry Act, 1952. |
| Definitions | 2. | (1) In these rules, unless the context otherwise requires:-
(a) "Act" means the Commission of Inquiry Act, 1952 (60 of 1952);
(b) "Assessor" means an assessor appointed under rule 4 of rules;
(c) "Commission" means a Commission of Inquiry appointed by State Government in pursuance of section 3 of the Act;
(d) "State Government" means the Government of Sikkim.

(2) Words and expression used but not defined in these rules shall have the same meaning respectively assigned to them under the Act. |
| Term of office
of the
Commission | 3. | The State Government, may by notification, require the Commission to submit its report on the points of reference within a specified period or by a specified date and may also require submission of interim reports within such specified period or date, as the case may be: |

Provided that the period or the date specified for submission of its report may be extended by the State Government from time to time.

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| Appointment of assessors | <p>4. (1) The State Government or, with the previous approval of the State Government, the Commission, may from time to time, appoint one or more assessors to assist and advise the Commission on any matter connected with the inquiry.</p> <p>(2) The assessors shall assist and advise the Commission on any matter on which the Commission may consult them in the course of its inquiry:</p> <p>Provided that the advice tendered by the assessor or assessors shall not be binding on the Commission:</p> <p>Provided further that where more than one assessors have been appointed and there is disagreement amongst them, the opinion of the majority shall be deemed to be the advice of the assessors.</p> |
| Powers of Commission to investigate or cause investigation to be made into matters pertaining to inquiry any stage | <p>(3) The Commission shall have the power to regulate the manner in which it may consult the assessors.</p> <p>(4) The State Government or, with the previous approval of the State Government, the Commission, may determine the traveling allowance, daily allowance and other incidental expenses that may be paid to each assessor.</p> <p>5. (1) Apart from investigation through officers and agencies contemplated under section 5 – A of the Act, the Commission may make or cause to be made at any stage after its appointment such investigation into any matter pertaining to the inquiry, by itself or its own agencies as it considers fit.</p> <p>(2) For the purpose of investigation under this rule any officer or agency of the Commission may, subject to the direction and control of the Commission,-</p> <ul style="list-style-type: none"> (a) summon and enforce the attendance of any person and examine him; (b) require the discovery and production of any document, and (c) requisition, subject to any claim of privilege, any public record or copy thereof from any office. <p>(3) The provisions of section 6 of the Act shall apply in relation to any statement made by a person in course of investigation under this rule as they apply in relation to any statement made by a person in course of giving evidence before the Commission.</p> |
| Issue and service of summons | <p>6. (1) A Commission may issue summons to persons whose attendance before it may be required, either to give evidence or to produce documents.</p> <p>(2) Every summons issued by a Commission shall be in duplicate and shall be signed by the Chairman thereof or by such person as he may empower in this behalf. It shall be sealed with the seal of the Commission and shall specify the time and place at which the person summoned is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document.</p> |

- (3) A person may be summoned to produce a document without being summoned to give evidence and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced, instead of attending personally to produce the same.
- (4) A summon to produce documents, may be for the production of all documents of a certain description in the possession or control of the person summoned.
- (5) Every summons shall be served in such manner as the Commission may generally or specially direct.
- (6) The provisions of sub-rules (1) to (5) apply, as far as may be, to every other process issued by a Commission.

Sitting of the Commission

- 7. A Commission may sit in public or in private as it thinks fit:

Provided that a Commission may sit in private on a request being made by the State Government in that behalf.

Procedure of inquiry

- 8. (1) A Commission shall, as soon as may be after its appointment, -
 - (a) issue notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice;
 - (b) issue a notification, to be published in such manner as it may deem fit, inviting from all persons acquainted with the subject of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.
- (2) Every statement furnished under sub-rule (1) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.
- (3) Every person furnishing a statement under sub-rule (1) shall also furnish to the Commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable, the originals or true copies of such of the documents as may be in his possession or control and shall state the name and address of the person from whom the remaining documents may be obtained.

Consideration of documents, affidavits, statements and other evidentiary materials available to the Commission

- 9. The Commission may take into consideration at any stage of Inquiry such documents, affidavits, statements and other evidentiary materials as are available to it, or as are taken charge of in course of investigation made under rule 5.

Recording of evidence	<p>10. (1) If upon examination of statements and documents furnished to it under sub-rule (1) of rule 8 and/or documents, affidavits, statements and other evidentiary materials referred to in rule 9, the Commission considers it necessary to record evidence, it shall first record evidence, if any, produced by the State Government and may thereafter record in such order as it may deem fit, -</p> <p>(a) the evidence of any person who has furnished a statement under clause (a) of sub-rule (1) of rule 8 and whose evidence the Commission, having regard to the statement, considers relevant for the purpose of the inquiry; and</p> <p>(b) the evidence of any other person whose evidence, in the opinion of the Commission, is relevant to the inquiry:</p> <p>Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it, if in its opinion, -</p> <p>(i) such attendance cannot be enforced except by causing undue hardship or inconvenience to that person;</p> <p>(ii) such attendance should be dispensed with for any other good and sufficient reasons to be recorded by the Commission in writing.</p> <p>(2) If, after all the evidence is recorded in sub-rule (1) the State Government applies to the Commission to recall any witness already examined or to examine any new witnesses, the Commission, if satisfied, that it is necessary for the proper determination of any relevant fact to do so, shall recall such witness or examine any such new witness.</p> <p>11. The Commission shall have the powers of a Civil Court to make local investigation either personally or through any person, duly authorized by it into any matters falling within the terms of reference.</p>
Right of cross-examination and representation by legal practitioners	<p>12. The State Government, every person referred to in Section 8 - of the Act and with the permission of the Commission, any other person whose evidence is recorded under rule 10, -</p> <p>(a) may cross-examine a witness other than a witness produced by it or him;</p> <p>(b) may address the commission; and</p> <p>(c) may be represented before the Commission by a legal practitioner or, with the consent of the Commission, by any other person.</p>
Procedure in matters not provided in these rules	<p>13. The Commission shall have the powers to regulate its own procedure in respect of any matter for which no provision is made in these rules.</p>

Retention of 14. The report of a Commission and papers, documents, affidavits, Statements and other materials connected with the subject-matter of inquiry or its establishment matter or any other matter handled by or in the Commission including the evidence tendered before the commission in original, shall be preserved in tact by the Commission and shall be remitted as far as practicable with the report of the Commission or as soon thereafter as possible.

BY ORDER AND IN THE NAME OF THE GOVERNOR.

**T.T.DORJI, IAS
CHIEF SECRETARY
F. NO. Home/Confdl./225/2009**

